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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,158	07/30/2001	Robert A. DiChiara JR.	7784-000146	2919

27572 7590 05/23/2005

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EXAMINER	
HOFFMANN, JOHN M	
ART UNIT	**PAPER NUMBER**
1731	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER

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50519	

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Commissioner for Patents

The reply filed on 15 April 2005 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): The amendment filed on 15 April 2005 presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are directed to an invention which is independent or distinct from the invention originally searched and examined. There would be an unreasonable, significant and undue burden on the Office to search and examine this new invention.

Newly submitted/amended claims 1-7, 23, and 25-28 are directed to a species that is independent or distinct from the invention originally claimed for the following reasons:

The originally examined mixture/matrix was substantially only sol gel plus alumina. But now the claim are directed to a composition that has fibers in it. For example if there were 20% fibers, one could not have the claimed 70% sol gel, because that would only leave 10% alumina particles – but the claim requires at least about 30% alumina particles.

Alternatively, the two claims can be considered as intermediate and final product relationship, The inventions are distinct, each from the other because of the following reasons: Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a material which can form the Kalinowski product and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-7, 23, 25-28 arewithdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. This leaves no claims to be examined – which necessitates this paper.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

John Hoffmann
Primary Examiner
Art Unit: 1781

5/19-05